IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 28TH NOVEMBER 2006 / 7TH AGRAHAYANA 1928

Crl.MC.No. 3783 of 2006()

LP.17/2005 of JUDL.MAGISTRATE OF FIRST CLASS, PAYYOLI

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PETITIONER: 3RD ACCUSED

ASHIQUE, S/O.MUSTHAFA,
AGED 30 YEARS, MUSALIYARDVIDA HOUSE,
THRIKKOTTUR AMSOM DESOM, AVIKKAL.

BY ADV. SMT.K.V.RESHMI
SRI.ARUL GEORGE SCARIA

RESPONDENTS: COMPLAINANT AND STATE

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1. S.I. OF POLICE,
PAYYOLI POLICE STATION.

2. THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3783 OF 2006

Dated this the 28th day of November, 2006.

ORDER

The petitioner is one of the accused against whom final report was filed after investigation, inter alia, under Sections 341, 323 read with Section 149 I.P.C. The petitioner, ie. the 3rd accused, was not available for trial. The co-accused were proceeded against. They were found not guilty and acquitted as per judgment, a copy of which is produced as Annexure-2.

2. The learned counsel for the petitioner submits that inasmuch as the co-accused have already been found not guilty and acquitted and inasmuch as the petitioner alone remains to be tried, the charge under Sections 143 & 147 does not arise and the petitioner cannot be mulcted with liability with the aid of Section 149 I.P.C. The learned counsel for the petitioner further submits that there is no specific overt act alleged against the petitioner and that, at any rate, the offences punishable under Sections 341 & 323 I.P.C have been compounded. The petitioner submits that if some further time were granted to the petitioner, the petitioner shall be in a position to report composition before the learned Magistrate.

3. The dictum in **Moosa v. Sub Inspector of Police (F.B)** [2006(1) KLT 552] makes it clear that the mere fact that the co-accused have been acquitted, is no reason to quash the proceedings against the absconding accused. I have been taken through Annexure-2 judgment. I note that all the eye witnesses were not even examined in that case. It would be puerile for this court from the nature of the evidence that was adduced in Annexure-2 to jump to the conclusion that there will be no evidence adduced against the petitioner even if appears and stands trial. Suffice it to say that the acquittal of the co-accused on the basis of the facts and circumstances revealed in the trial which was held against them cannot at all entitle the petitioner to the relief of quashing the proceedings against him. The petitioner's contention that the matter has been compounded between the parties must certainly be raised before the court which the case is pending. That court can certainly be requested not to frame charges for the offences punishable under Sections 143 & 147 I.P.C, if such a contention is available from the records produced before court. Needless to say, if there is composition, that can also be reported to the learned Magistrate, who must pass appropriate orders on such application for composition.

4. The proceedings against the petitioner has been transferred to the list of Long Pending cases. The petitioner apprehends that bail may not be granted to him, if he appears before the learned Magistrate. He further prays that a direction under Section 482 Cr.P.C should be issued to release the petitioner on bail when he applies for bail after surrender.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. But if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to dispose of the application for bail expeditiously and on merits - on the date of surrender itself. The learned Magistrate must also, I direct, proceed to consider the claim of the petitioner for discharge and also the claim if any raised that the matter has been compounded.

6. With the above observations, this Crl.M.C is, dismissed.

(R.BASANT, JUDGE)

rtr/